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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 625

COLLEGE HOMES, INC.,

Petitioner,

vs.

THE UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

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343 U.S.

COLLEGE HOMES, INC.,
By ALDEN CHAS. PALMER,
President.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 625

COLLEGE HOMES, INC.,

Petitioner,

vs.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

College Homes, Inc., a corporation, through its president, pursuant to Title 28, United States Code, Section 1654, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit, entered December 3, 1951, affirming the judgment of the District Court of the United States for the Western District of Oklahoma, entered March 23, 1951.

Jurisdiction

The Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(1).

Questions Presented

1. DID THE DISTRICT COURT DEPRIVE PETITIONER OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW, CONTRARY TO THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA?

2. DID THE DISTRICT COURT ENTER JUDGMENT PREJUDICIAL TO THE PETITIONER WITHOUT A VALID TRIAL?

Statement of the Case

Petitioner, though persevering, was unable to obtain counsel prior to trial date. (R. 78, 57-59). Petitioner's pleadings, though drawn by a layman, being both crude and prolix, may be said to spell out conspiracy to defraud the United States Government and this petitioner, as one of the defenses (R. 14-48)

The case was the subject of a pretrial conference on January 29, 1951 (R. 71-78), when it was set for trial on March 20, 1951. Petitioner's president, Mr. Palmer, was informed about 4:00 p.m., Friday, March 16, 1951, that this case would be heard at 9:30 a.m., Monday, March 19, 1951, a day earlier than previously set. (R. 59). Neither at the pre-trial conference (R. 72) nor on the date of the trial (R. 78) was petitioner represented by counsel, although petitioner expressed desire for counsel. (R. 74, 91, 101, 103). The Honorable Stephen S. Chandler, Jr., Judge, entered judgment in the United States District Court for the Western District of Oklahoma, foreclosing mortgages, three real estate and one chattel, in the amount of $541,000.00. (R. 48)

Details concerning Petitioner's efforts to employ competent counsel are set forth in the First Affidavit of Mr. Palmer, (R. 57-59). The second Affidavit (R. 59-70) sets forth details developing the pattern of conspiracy used in defrauding the Government of the United States and this

Petitioner, and which disabled petitioner from meeting its obligations to pay the notes and mortgages.

Specifications of Errors To Be Urged

1. The court below erred in approving the action of the District Court in proceeding to trial with the knowledge that the complex issues presented by the defense of conspiracy would not properly be presented for determination by the court without preparation by competent counsel.

2. The court below erred in approving the action of the District Court in misleading the petitioner to believe that fraud could be a defense against the United States of America, contrary to the provisions of the Tort Claims Act.

3. The court below erred in approving the failure of the District Court to make Mr. Palmer and the three construction companies parties to the action when their interest became apparent.

Reasons For Granting the Writ

The District Court of Appeal entered judgment prejudicial to the Petitioner which affirmed a judgment against Petitioner that had been entered without a valid trial, and which deprived Petitioner of its property without due process of law, contrary to the Fifth Amendment to the Constitution of the United States of America.

Conclusion

Certiorari should be granted.

COLLEGE HOMES, INC.,
By ALDEN CHAS. PALMER,
President,
3255 Palmer Drive,
Los Angeles 65, California.

BRIEF IN SUPPORT OF PETITION

I

The District Court Deprived Appellant of its Property Without Due Process of Law, Contrary to the Fifth Amendment to the Constitution of the United States

In so far as property of a corporation is concerned, private corporations are protected by the Constitutional guaranty of due process of law. (*Louis K. Liggett Co.* v. *Baldridge*, 278 U.S. 105) An opportunity for hearing is one of the essential elements of due process of law and no one may be divested of his property unless he is allowed a hearing before an impartial tribunal, where he may contest the claim set up against him, and be allowed to meet it on the law and facts. (*Iron Cliffs Co.* v. *Negaunee Iron Co.*, 197 U.S. 463). And the right to a hearing includes a right to the aid of counsel. (*Powell* v. *Alabama*, 287 U.S. 45)

Powell v. *Alabama* defines a "hearing" and that definition, we submit, draws no distinction between a criminal and a civil case. When the Constitution requires a hearing, it requires a fair one, (*Wong Yang Sung* v. *McGrath*, 339 U.S. 33); and when property rights are concerned, an opportunity for a fair hearing at some stage is required to meet due process. (*Ewing* v. *Mytinger & Casselberry*, 339 U.S. 594). Petitioner respectfully submits that it failed to get a fair hearing, there being no adequate presentation by qualified counsel of issues relevant to the litigation.

A trial, with both sides represented by competent counsel, is far more important for the benefit of the court, as a protection against an unwise decision, than for the benefit of the litigants. And interests of justice would best be served by a trial with both sides represented by

counsel, particularly when requested by the litigants. Petitioner, through its president, Mr. Palmer expressed a desire for counsel (R. 74, 91, 101, 103) and the court knew that he had diligently sought counsel to represent petitioner (R. 74).

In determining whether a party has had sufficient opportunity for the preparation of its case, the sound discretion of the court is to be exercised in the light of the surrounding circumstances. The first affidavit of Mr. Palmer (R. 57-59) paints the "surrounding circumstances," and shows that the court put this case to trial on March 19, 1951, with knowledge that appellant, in good faith, for several months up to and including the week of March 11, 1951, had tried in vain to employ competent counsel, and knew the names of at least four of them, two of whom had been paid a fee. That affidavit, we submit, squarely meets this test.

The District Court Entered Judgment Prejudicial to the Appellant Without a Valid Trial

Appellant was entitled:

(1) to be advised at the pre-trial conference of the true purpose of a pre-trial conference so that it might reap all the benefits thereof.

> "The Court: And the purpose of pre-trial is to save time in the trial of the case."
>
> "Mr. Palmer: I understand that, Your Honor". (R. 72)

What the court told Mr. Palmer, and what Mr. Palmer "understood", is foreign to what was said in *Berger* v. *Brannan* (CA-10; 1949), 172 Fed. (2) 241, 243:

> "The purpose of the pre-trial conference is to simplify the issues, amend the pleadings where necessary,

> and to avoid unnecessary proof of facts at the trial. • • • The spirit of the pre-trial procedure is not only to call the parties together and ask them to stipulate and agree as to all matters concerning which there can be no dispute, but to compel them to stipulate and agree to all facts concerning which there can be no real issue."

(2) to be advised at the pre-trial conference that fraud was not a defense, instead of being told too late that it was not.

At the pre-trial conference, Mr. Palmer stated Petitioner's position (R. 72, 73).

> "The Court: Now, of course, what is stated here are his conclusions. What evidence are you going to have to prove these statements?
>
> "Mr. Palmer: Your Honor, I beg to be released from any further questions unless I have proper counsel. (R. 74)
>
> • • • • • • •
>
> "The Court: You don't need to worry. You don't need any help from anybody except this court if you can prove the things you say you can that there was fraud." (R. 77).

The court's statement to Mr. Palmer not to worry was soothing to him as a layman, but it proved to be misleading, and (3) not to be postured in the position of relying upon hearsay evidence, after objection thereto.

The hearsay evidence had been objected to (R. 80), thus it was not admissible in evidence as evidence. (*Baltimore-American Insurance Co.* v. *Pecos Mercantile Co.*, CA-10; 1941; 122 Fed. (2) 143, 146). An appellate court will reject improperly admitted evidence. (*United States* v. *King*, 7 How. 833, 854, 855).

Another feature deserves attention. All of the interested parties were not before the court.

> "Mr. Palmer: * * * College Homes, Inc. is here resisting the efforts of the United States to foreclose mortgages on its properties located at Stillwater, Oklahoma, unless its interests and those of A. C. Palmer Construction Company, an Oklahoma corporation, dissolved August 29, 1948, A. C. Palmer and Company, a California Corporation, A. C. Palmer Construction Co., a California corporation, Alden Charles Palmer, president, * * * are recognized and fully protected by the court. * * * " (R. 82). "College Homes Inc. and the three construction companies * * * and Alden Charles Palmer, have ploughed $250,000 * * * into the venture, and are entitled to intervene and be heard" (R. 86).

In all fairness, upon this information coming to the attention of the court, it should have made Mr. Palmer and the three construction companies parties, sua sponte. When the United States itself seeks its rights at the hands of the court, equity requires that the rights of other parties interested in the subject matter be protected. (*Carr* v. *United States,* 98 U.S. 433).

Other excerpts from the trial proceeding show that Mr. Palmer was confused when he appeared before the court alone on Monday March 19, 1951, a day earlier than the case had been previously set. (R. 59, 78, 81)

> "The Court: You don't have a lawyer yet, do you——"
>
> "Mr. Palmer (Interposing): No, I do not, Your Honor."
>
> "The Court: Mr. Palmer. *You are going to represent yourself then?*"
>
> "Mr. Palmer: Yes sir."

* * * * * * *

"Alden Chas. Palmer, *appearing in his own behalf*, then being first duly sworn to tell the truth, stated and testified as follows: * * * " (Italics substituted)

It would appear, thereby that no one appeared for the Petitioner, that Mr. Palmer appeared *in propria personam* though not a party to the proceedings, and that Mr. Palmer was not alone confused, unless the court eyed Petitioner as Mr. Palmer's *alter ego*.

This Court has the power of supervision over the administration of justice in the District Courts, and this Court ought not to sanction the method followed by the District Court in the disposition of this case. *Cf. Thiel* v. *Southern Pac. Co.*, 328, U.S. 217, 225.

As was cited in *United States* v. *Chapman* (CA-10; 1946), 158 Fed. (2) 417, 421, said:

> "We must make sure that the lamentations of the unsuccessful litigant are without foundation, either in fact or circumstance."

Since a conspiracy between officers and employees of the Government of the United States, holding positions of trust, is involved in this case, the United States of America is estopped to set up its claim against Petitioner.

> "The applicable principle is fundamental and unquestioned. He who prevents a thing from being done may not avail himself of the nonperformance which he has himself occasioned, for the law says to him, in effect: 'This is your own act, and therefore you are not damnified.' Sometimes the resulting disability has been characterized as an estoppel, sometimes as a waiver. The label counts for little. Enough for present purposes that the disability has its roots in a principle more nearly ultimate than either waiver or estoppel, the principle that no one shall be permitted to found claims upon his own inequity or

take advantage of his own wrong. * * * A suit may not be built on an omission induced by him who sues." *Stearns Co.* v. *United States*, 291 U.S. 54.

It is respectfully submitted that this petition should be granted.

COLLEGE HOMES, INC.,
By ALDEN CHAS. PALMER,
President,
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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 625

COLLEGE HOMES, INC., *Petitioner*

v.

THE UNITED STATES OF AMERICA

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The judgment of the United States District Court for the Western District of Oklahoma was entered without opinion.[1] The judgment of the United States Court of Appeals for the Tenth Circuit was entered without opinion.

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[1] The findings of fact of the District Court are contained in the judgment (R. 48-56).

JURISDICTION

The judgment of the Court of Appeals was entered on December 3, 1951 (R. 122). The petition for a writ of certiorari was filed on March 1, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, in the circumstances of this civil case, the District Court erred in proceeding to trial when petitioner was not represented by counsel.

STATEMENT

This is a civil suit by the United States for recovery of the sums due on three promissory notes executed by petitioner and for the foreclosure of one chattel and three realty mortgages securing the notes. The original payees and mortgagees were insured against loss pursuant to the provisions of Section 608 of the National Housing Act (56 Stat. 301, as amended, 12 U.S.C. 1743) relating to the insurance of mortgage loans. Upon petitioner's default in payment, the notes and mortgages were assigned to the United States and the original payees and mortgagees were reimbursed under their contracts of insurance. (R. 2-14.)

Petitioner admitted execution of the notes and mortgages and default in payment (R. 72). Its sole defense was fraud in the inception of the notes and mortgages (R. 72-73). Petitioner alleged that

various named persons had conspired to induce the Federal Housing Administration to approve an economically unsound housing project (R. 23-48, 59-70). At the trial, however, petitioner's only witness, its president, refused to testify directly with respect to the allegations of fraud and conspiracy (R. 100-111). The district court accordingly entered judgment for the United States, finding that petitioner's president "doesn't know of any fraud in connection with this of any nature whatever" (R. 111). A motion for a new trial, supported by an affidavit of petitioner's president, was denied (R. 70), the court again finding that there was no "fraud or conspiracy or any dishonesty on the part of anyone in the making and closing of this loan" (R. 115).

On appeal, petitioner reiterated its charges of fraud and conspiracy. Its principal contention, however, was that the district court had abridged petitioner's constitutional rights in proceeding to trial when petitioner was not represented by counsel. (R. 71.) With respect to this contention, the record reveals the following:

The complaint was served on petitioner on June 21, 1950 (R. 118). Because of petitioner's difficulties in retaining counsel, six orders were entered at various times extending petitioner's time to answer to November 6, 1950 (R. 118-119, 72). During this interval, retainer fees were paid by

petitioner's president to two law firms, both of which withdrew from the case (R. 58, 118). A pretrial conference was not held until January 29, 1951 (R. 71), and at that time, the trial, which had originally been set for February 20, 1951, was postponed to March 20, 1951, at petitioner's request for further opportunity to procure counsel (R. 71-78).[2] At the pretrial conference, petitioner's president stated that he was then able to raise funds sufficient to "go out and hire a dozen lawyers" but "not the lawyer that I need in this case" (R. 74). At the time of trial, petitioner was still unrepresented by counsel and appeared *pro se* by its president (R. 78, 81). At the outset of the trial, the court asked petitioner's president for an explanation of petitioner's inability to employ counsel, but petitioner's president declined an express answer (R. 92). Although petitioner was not represented by counsel at the trial, it was so represented on motion for a new trial and on appeal (R. 112-116, 122).

The court below affirmed, reciting in its judgment that "it being the considered view of the court that the appeal in this cause is utterly without merit and that no useful purpose would be

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[2] Because of a conflict with another case on the district court's calendar, the trial of this case was advanced one day from its postponed date of March 20 to March 19, 1951. Petitioner acknowledges (Pet. 2) that its president was notified of this change on March 16, 1951, and it made no objection to the one-day advancement at the trial.

served by writing an opinion, it is therefore ordered by the court that the judgment should be and is hereby affirmed without written opinion." (R. 122.)

ARGUMENT

Petitioner's argument here, as in the court below, is that the trial in the district court was constitutionally invalid because petitioner was not represented by counsel. However, petitioner cites no authority, and we are aware of none, for the proposition that judgment cannot validly be entered in a *civil* suit where a party appears *pro se* because he cannot or will not obtain counsel.[3]

Contrary to petitioner's assertions, the trial court afforded petitioner more than ample opportunity to employ counsel. After the complaint was served on petitioner on June 21, 1950 (R. 118), six orders were entered at various times extending petitioner's time to answer to November 6, 1950 (R. 118-119, 72). During this interval, retainer fees were paid by petitioner's president to two law

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[3] The fact that a party may suffer a valid civil judgment against him though he is not represented by counsel is in a sense illustrated by the provisions of 28 U.S.C. 1915 respecting proceedings *in forma pauperis*. Section 1915(d) authorizes a court, in its discretion, to appoint counsel to represent persons unable to employ counsel because of poverty. It applies only to citizens, however, and thus has no application to aliens or to corporations, such as petitioner. Cf. *Quittner* v. *Motion Picture Producers & Distributors of America*, 70 F. 2d 331, 332 (C.A. 2); see *Adkins* v. *DuPont Co.*, 335 U.S. 331, 333, 342.

firms, both of which withdrew from the case for reasons best known to petitioner (R. 58, 118). A pre-trial conference was not held until January 29, 1951 (R. 71), and, at that time, the trial, which had originally been set for February 20, 1951, was postponed to March 20, 1951, at petitioner's request for further opportunity to procure counsel (R. 71-78). At the pre-trial conference, petitioner's president stated that he was then able to raise funds sufficient to "go out and hire a dozen lawyers" but "not the lawyer that I need in this case" (R. 74). In short, petitioner's invocation of due process is baseless; there is no remote suggestion of unfairness in the trial court's unwillingness to postpone this lawsuit indefinitely while petitioner allegedly sought legal assistance which was peculiarly unavailable for unexplained reasons.

CONCLUSION

The judgment below is clearly correct; as the court below observed (R. 122), petitioner's "cause is utterly without merit." It is respectfully submitted that the petition for a writ of certiorari should be denied.

PHILIP B. PERLMAN,
Solicitor General.

HOLMES BALDRIDGE,
Assistant Attorney General.

PAUL A. SWEENEY,
BENJAMIN FORMAN,
Attorneys.

APRIL 1952

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[redacted]

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 625

COLLEGE HOMES, INC.,

Petitioner,

vs.

UNITED STATES OF AMERICA

PETITION FOR REHEARING FOR PETITION FOR WRIT OF CERTIORARI

Petition for Rehearing for Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

College Homes, Inc., respectfully petitions the Honorable Court for a rehearing after denial of Petition for Writ of Certiorari on the grounds that it was physically impossible to prepare and file a Reply Brief to the Brief in Opposition between the time of its receipt by us (April 28, 1952) and the denial (May 5, 1952), and also, that the information contained in the Reply Brief of Petitioner if considered by this Court would compel a different result and that the delay in

presenting and filing the Reply Brief of Petitioner was not occasioned by default or neglect of the Petitioner.

Statement

The Brief in Opposition was received by Petitioner on April 28, 1952, the Petition for Writ of Certiorari was denied May 5, 1952, exactly 7 days later. The Reply Brief of Petitioner was mailed Registered, Airmail, Special Delivery, May 6, 1952 and received by the Clerk of the Supreme Court May 8, 1952. A purported copy of a collect telegram dated May 5, 1952 was received by Petitioner by airmail May 8, 1952 and the Reply Brief of Petitioner was returned to Petitioner Monday, May 12, 1952 and Wednesday May 14, 1952; that the material and information contained in the Reply Brief of Petitioner discloses substantial grounds for granting the Petition for Writ of Certiorari herein which were not previously presented to this Court, and which grounds became pertinent only upon the presentation and filing of the Brief in Opposition to the Government of the United States of America.

Argument

Inasmuch as this information was not considered prior to denial of Petition for Writ of Certiorari the statement and argument contained in the Reply Brief of Petitioner, which is attached hereto, made a part hereof as though fully set forth therein, and particularly the conclusion referred to therein demonstrate the importance of a review by this Honorable Court of the record of the Tenth Circuit Court of Appeals.

Conclusion

It is important that the highest court of our land carefully review the opinion of the Tenth Circuit Court entered as an Order reference to this case December 3, 1951 to redetermine

the question of whether or not to put its stamp of approval upon an inherently dishonest transaction cleverly engineered and executed through a Federal Agency (Federal Housing Administration) of the United States Government in conspiracy to defraud the United States Government and innocent persons out of several hundred thousands of dollars and with a continuing conspiracy to in turn endeavor to completely "whitewash" and cover up by means of a legal and technical procedure labeled *"foreclosure"*.

This case offers an opportunity to apply the conception of justice as set forth in the opening words of the *Institutes of Justinian,* the key to that vast edifice of Roman Law which embodied the experience of the ancient world. This classical definition of *justice,* a legal rendering of the Golden Rule, and covering economic as well as political rights, is:

> *"Justice is the constant and enduring will to give to every man his right."*

It is respectfully submitted that this petition should be granted.

COLLEGE HOMES, INC.

By ALDEN CHAS. PALMER,
President,
3255 Palmer Drive,
Los Angeles 65, California.

I, Alden Chas. Palmer, do hereby certify that the petition for rehearing herein is presented in good faith, not for delay, and is restricted to the grounds stated therein, and that such grounds are confined to intervening circumstances of substantial and controlling effect and to other substantial grounds available to Petitioner, not previously presented, but included in the record.

ALDEN CHAS. PALMER,
President of College Homes, Inc.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1951

No. 625

COLLEGE HOMES, INC.,

Petitioner,

vs.

UNITED STATES OF AMERICA

REPLY BRIEF OF PETITIONER

Questions Presented

1. Did the District Court deprive Petitioner of Its Property Without Due Process of Law, Contrary to the Fifth Amendment To The Constitution of the United States of America?

2. Did the District Court enter Judgment Prejudicial to the Petitioner Without a Valid Trial?

Statement

Attached hereto and made a part hereof (Appendix 1 through 21 inclusive) are photo copies of letters, telegrams, and reference data which sets forth the efforts of Petitioner to obtain legal counsel and an impartial investigation of the facts concerning the criminal conspiracy and collusion. Different reasons were given for the withdrawal of each counsel, but a careful reading of these exhibits and particu-

larly no. 9 (letter addressed to Mr. Rice of the Federal Bureau of Investigation) will disclose that:

> ". . . Political patronage within the State made it difficult to obtain high class and reputable counsel as we had nothing to offer them except a tough job of attempting to prosecute a group of powerful politicians and bureaucrats from whom most legal offices, directly or indirectly, apparently relied for business . . ." (Append. 9, pg. 7.)

Since the defense of Petitioner was fraud and deceit involving conspiracy and collusion, a complicated legal problem, and since the personalities involved were so influential, each attorney capable of handling such a case found reasons for withdrawing. While legal assistance was "peculiarly unavailable" to the Petitioner for unexpressed reasons, the record, will show by the Docket Entries and photo copies of letters and data attached hereto as Appendix 1 through 21 inclusive, Petitioner sought to employ only high class, competent and reputable counsel with honesty, integrity, and experience to consider handling the very complex and far reaching case of conspiracy to defraud the United States Government, which to date continues to be completely "whitewashed" and buried with the other corruption scandals.

Extensions to Plead

True, six (6) orders were entered at various times extending Petitioner's time to file answer. However, in each case, excepting one, the applications were requested by and granted to legal counsel then employed, as follows:

First Extension—to Whitten and Whitten—July 11, 1950 (Append. 1);

Second Extension—to Whitten and Whitten—July 21, 1950 (Docket Entry R. 118);

Third Extension to A. C. Palmer in person Sept. 8, 1950 (Docket Entry R. 119);

Fourth Extension to Dudley, Du Vall & Dudley, Sept. 21, 1950 (Append. 5);

Fifth Extension to Dudley, Du Vall & Dudley, Oct. 2, 1950 (Docket Entry R. 119);

Sixth Extension to Dudley, Du Vall & Dudley, Oct. 26, 1950 (Docket Entry R. 119).

Furthermore, for reasons unexplained, the Statement of Docket Entries are incomplete and it makes no record of the fact that Whitten and Whitten were asked to withdraw because of their apparent change of attitude on matters other than the merits of the case. (Append. 9, pg. 3 and 4.)

Docket Entries fail to record that Dudley, Du Vall & Dudley ever were attorneys for Petitioner, were officially employed to represent Petitioner or that they requested and obtained the last three (3) orders of extension, which were granted. Docket Entries fail to record that Dudley, Du Vall & Dudley ever filed an application for leave to withdraw as counsel for Petitioner, or that a court order was ever filed permitting them to withdraw as attorneys for Petitioner.

Answer was filed by Alden Charles Palmer, personally, Friday, October 27, 1950 at 4:58 p.m. (R. 119).

Reasons for Withdrawal of Counsel

The memorandum letter addressed to Mr. John Rice, Federal Bureau of Investigation, dated March 28, 1951, and delivered November 15, 1951, expresses the reaction of various other legal offices contacted (Append. 9). However, it does not state that Judge Chandler, on September 19, 1950, refused to have Mr. R. L. Hert's name expunged from the court record as having appeared as our counsel at the time the receiver was appointed June 28, 1950, (Append. 2, 3, & 4) even though Mr. Hert requested same and Mr. Shelton,

U. S. District Attorney, by written approval on the original application recommended that Judge Chandler sign the Order.

In lieu of signing the Order, Judge Chandler stated to Mr. Hert that he wanted to protect Mr. Hert, (by not signing the order), and when the president of Petitioner asked Judge Chandler if petitioner were not entitled to some protection —Judge Chandler's reply was that petitioner would be fully protected, and for petitioner to rest assured that the case would be properly set up for appeal in the Appellate Court —in plain English, Judge Chandler pre-judged this case even before it was set for trial.

As trial date approached upon receiving notification from Mr. Coe—by mail—at Los Angeles that he would be unable to represent us—I returned to Oklahoma City (Monday, March 12, 1951) and paid a visit to Mr. Shelton's U. S. District Attorney's office to inform him that unfortunately we were without counsel and did not know what to do. Mr. Shelton stated that we *had* to have counsel and recommended that I call on a Mr. John E. Marshall who was honest and upright and a very fine attorney who commanded the respect of both the U. S. District Attorney's office as well as that of the various Judges in Oklahoma City—adding that if Mr. Marshall could be obtained his fees would be reasonable. This is the last place in the State where Petitioner should seek or be given a recommendation of where to obtain proper counsel, yet in desperation I did call on Mr. Marshall and the first thing he asked was if Judge Chandler had sent me to him.

A couple of days later while I was in Mr. Marshall's office reviewing our case, Judge Chandler telephoned Mr. Marshall and stated he understood that Mr. Marshall was going to represent Petitioner, and then asked him "who" sent Mr. Palmer to him; Mr. Marshall answered by stating "a

friend" had recommended him but did not add that the "friend" was Mr. Shelton, the U. S. District Attorney.

Mr. Marshall informed Judge Chandler that although there had been filed with the Clerk of the Court voluminous documentary data including answer, amended answers, 68 page story and various photo copy records that *not a single bit of the data filed* had been offered or admitted into the Court Records as evidence in evidence. Mr. Marshall also told Judge Chandler that he had not as then decided to represent Petitioner but if he did he would require at least a thirty (30) day continuance to prepare his case.

Neither Judge Chandler nor Mr. Shelton would assure him of the extension of time to prepare the case and Mr. Marshall considered that with no evidence admitted into the record at time of pre-trial, that if Judge Chandler wanted to, he would render a decision March 19, 1951 immediately, thereby closing the case against Petitioner without any possible chance of appeal—due to the lack of evidence in the record. He therefore could not attempt to represent Petitioner at the trial without a continuance.

However, after judgment, at a later date at the request of Mr. Palmer, Mr. Marshall did prepare a motion for new trial. A couple of days before the hearing of this motion, Mrs. Leatherman, secretary to Mr. Shelton, the U. S. District Attorney, requested Mr. Marshall *not to do anything* in the College Homes Case that would disturb the pleasant relations that exist between the U. S. District Attorney's office and himself.

That same afternoon while Petitioner's president was in Mr. Marshall's office Mr. Shelton telephoned Mr. Marshall and in the conversation asked Mr. Marshall *not to put him* (Mr. Shelton) *on the spot* when we appeared in Court asking for a trial.

Earlier when Judge Dudley withdrew from the case he stated to Petitioner's president that the case was so corrupt

and far reaching that only by an exposure on a National scale of the corruption with the nation-wide newspaper publicity and National Broadcasting network news commentary could the case be exposed for what it was; namely, conspiracy to defraud the United States Government and certain individuals out of hundreds of thousands of dollars —in addition to the losses which the College Homes, Inc., had been placed to by the conspiracy and fraud involved.

The list of items attached hereto as exhibits, and designated Append. 1-21, inclusive, having reference to Petitioner's efforts to obtain legal counsel and criminal investigations, is as follows:

Exhibit Description

1. W & W letter, July 11, 1950—First Extension of Time granted.

2. C. H. Inc. letter, September 18, 1950—To Whom It May Concern. (Exhibit "O", page 312 of Defendant's Exhibit #1, R. 1.)

3. R. L. Hert, Attorney's Application, Sept. 18, 1950, name expunged. (Exhibit P, page 313, of Defendant's Exhibit #1, R. 1.)

4. Order September 18, 1950, Court refused to sign. (Exhibit Q, page 314 of Defendant's Exhibit #1, R. 1.)

5. D, D, & D letter, October 5, 1950—Fourth Extension of time.

6. D, D, & D letter, December 9, 1950—Confirming previous employment. (Exhibit #4, page 333, R. 1.)

7. D, D, & D letter, March 6, 1951—Re: Injustice. (Exhibit #5, page 334, R. 1.)

8. W.O.C. letter, February 26, 1951—Re: Legal Counsel. (Exhibit #6, page 336, R. 1.)

9. C. H. Inc., nine (9) page letter dated March 23, 1951, addressed to Mr. John Rice, Federal Bureau of Investigation, delivered to Mr. Rice on November 15, 1951, the day

before the hearing by the Tenth Circuit Court of Appeals at Wichita, Kansas—Re: Comments and opinions stated by various attorneys.

10. J. E. M. Letter, November 23, 1951, to Judge Sam C. Bratton concerning Department of Justice's instructions to F.B.I. to discontinue further investigation as of April 26, 1951.

11. Judge Bratton's letter of acknowledgement, November 26, 1951.

12. Motion for directive filed 8:50 a.m., March 19, 1951 before "so called trial" commenced, requesting criminal investigation be started and charging Dr. Henry G. Bennett and Hugh Askew directly, and naming 26 other persons, most of whom were involved directly or indirectly in a conspiracy to defraud the Government. (Page 325, R. 1, R. 119.)

13. C. H. Inc. letter, November 21, 1951, to Federal Bureau of Investigation. (Exhibit "L", page 306, R. 1.)

14. C. H. Inc., telegram, November 21, 1951, to Hon. Harry S. Truman. (Exhibit page 339, R. 1.)

15. C. H. Inc. letter November 21, 1951, to Hon. J. Howard McGrath. (Exhibit M, page 307, R. 1.)

16. C. H. Inc. letter November 21, 1951, to Robert E. Shelton, U. S. District Attorney. (Exhibit K, page 305, R. 1.)

17. U. S. Senate Investigating Sub-Committee letter Dec. 11, 1950. (Exhibit N, page 380, R. 1.)

18. C. H. Inc. letter, December 23, 1951, Judge Chandler, copy of which was filed and entered on the Court's Docket but apparently deleted from official records reported in Statement of Docket Entries. (Page 309, R. 1.)

19. Excerpts of C. H., Inc., telegram on July 14, 1951 to Hon. Harry S. Truman. (Page 258, R. 1.)

20. C. H., Inc., telegram, January 16, 1951 to Honorable Burnett R. Maybank, U. S. S. (Page 340, R. 1.)

21. Comments by Cortright quoting Franklin D. Richards, F.H.A. Administrator—misleading and slanted statements.

It is ironic that items 13 through 20 inclusive, although entered on the Docket at Oklahoma City, are *not* included in Statement of Docket Entries. (R. 118, 119, 120, 120a.)

Incomplete Statement in Brief for Opposition

Brief in opposition, page 2 states:

> "This is a civil suit by the United States for recovery of the sums due on three promissory notes executed by Petitioner and for the foreclosure of one chattel and three realty mortgages securing the notes. The original payees and mortgagees were insured against loss pursuant to the provisions of Section 608 of the National Housing Act (56) Stat. 301, as amended, (12 U.S.C. 1743) relating to the insurance of mortgage loans. Upon Petitioner's default in payment, the notes and mortgages were assigned to the United States and the original payees and mortgagees were reimbursed under their contracts of insurance. (R. 2-14.)"

The foregoing is correct as far as it goes, yet it does not mention that mortgage foreclosure procedures were not commenced until *over one year* after default.

Argument

By not commencing foreclosure within one (1) year, as called for by the National Housing Act, Rules and Regulations, it is reasonable to conclude that the Federal Housing Commissioner *himself* defaulted in his action to institute foreclosure proceedings and thereby forfeited any legal right to file foreclosure dockets at a date beyond the one (1) year period provided by law.

The above point is secondary to the real issue, namely that the facts support the claim that the mortgages and notes were null and void, having been executed as a result of fraud and deceit involving conspiracy and collusion in a well conceived pattern to defraud the United States Govern-

ment and other innocent persons out of hundreds of thousands of dollars.

Mr. Franklin D. Richards, Federal Housing Administrator and Commissioner in a letter addressed to Mr. Alden Charles Palmer, President of College Homes, Inc., dated July 6, 1950, stated as follows:

> "The reason foreclosure suit was commenced at this time was simply that all three mortgages have been in default for *more than one year* and the facts did not appear to justify further delay." (Defendant's Exhibit 70, page 248 of defendant's Exhibit #1, R. 1.)

As judgment in the amount of $578,548.87 was awarded (R. 111) Mr. Shelton, U. S. District Attorney stated (R. 111):

> "This case, Your Honor, the appraisement is waived and will be, at least, six months before there is a sale."

and the court agreed (R. 111).

Petitioner contends that the commissioner has deliberately attempted to conceal this conspiracy by having issued 2½ per cent interest bearing 10 year debenture bonds, to the mortgagee, so the true value of the properties may be concealed for ten years or longer, if necessary, and by waiving the appraisement the plaintiff forfeited rights to a deficiency judgment against the defendant, which could run into several hundred thousand dollars: Had the properties been placed on the open market and sold on a basis of competitive bidding in our opinion the end result would have been a sale amounting to not to exceed $.20 on the dollar or a gross loss of several hundreds thousands of dollars to the government, by this procedure the Plaintiff would have had the right to file for a deficiency judgment to offset the loss by the sale.

However, the Plaintiff chose to conceal *indefinitely* the

true facts involving the conspiracy to defraud the government by lettering the title of the properties remain in the name of the FHA Commissioner as long as necessary to conceal the true value of the property.

Petitioner contends that the very courts that are pledged to deal in equity and justice have projected themselves into a continuing act of conspiracy by rendering a judgment of nearly $600,000 on a null and void mortgage foreclosure procedure, yet waiving all rights to a deficiency judgment against the Plaintiff in an amount of several hundred thousand dollars.

Petitioner does not contend that judgment cannot be rendered in a civil suit where the party appears *pro se,* but on the contrary that the record shows that petitioner did not appear *pro se* (R. 59, 78, 81), although it attempted to do so. Petitioner does contend that the record in this case demonstrates that competent and experienced counsel was essential to an impartial hearing and a proper presentation of Petitioner's defense of fraud and deceit involving conspiracy and collusion to defraud the United States Government. That this is especially true where the trial judge rendered a decision without examining the exhibits of this Defendant but in fact had pre-determined that it would be necessary for Defendant to appeal.

Contrary to the statement in the brief in opposition to the petition herein, Petitioner's president did not refuse to testify directly with respect to the allegations of fraud and conspiracy (R. 100-111), but in fact attempted to do so (R. 104, 105). That a proper presentation of such testimony required preparation by competent legal counsel was apparent even to Petitioner's president.

As a non-lawyer he testified (R. 104):

> ". . . That there was a conspiracy and *occl*usion between Dr. Bennett and his organization and this office over here in falsifying F.H.A. procedure, analysis,

and so forth, to get housing in Stillwater, at the expense of the government and somebody else for nothing."

He further asserted that the extent of the conspiracy would have to be expanded by proper counsel and that he had consistently requested the District Attorney to authorize the F.B.I. to investigate persons he had named in order to bring out the pattern and extent of the conspiracy which had been carried out (R. 105).

Conclusion

In light of the disposition of this case by the Tenth Circuit Court of Appeals (R. 122) in observing that "this case is utterly without merit", Petitioner believes that the Appellate Court failed to consider the implication of the waiver of the appraisement, the waiver of deficiency judgment, the fact that the Trial Court announced its decision within less than 1½ hours even though at the Trial Court's suggestion it had admitted into evidence Defendant's Exhibits Nos. 1 through 7 of some 275 pages, after first denying two requests for an impartial investigation and motion for directive to indict the ring leaders for conspiracy to defraud the United States Government. Otherwise it would appear that the members of the Court lacked the courage and conviction to uphold the judgment with a written opinion; therefore Appellant respectfully asks this court to grant this petition, reverse the judgment and remand this case to the District Court for a new trial or for trial so as to return the properties to the Petitioner on an equitable basis.

Disregarding the basic fraud and conspiracy under which the mortgages and notes were executed the waiver of the deficiency judgment is in itself conclusive that the Government of the United States has been defrauded out of several hundred thousand dollars, in addition to the losses of the petitioner. Therefore, petitioner requests an impartial

investigation in order that the guilty persons, whoever they may be, may be brought to justice (Append. 13) or that the petitioner and its President, Alden Chas. Palmer, be indicted for conspiracy to defraud the United States Government.

In closing therefore, it is important that the highest court of our land carefully review the opinion of the Tenth Circuit Court entered as an Order reference to this case December 3, 1951 to redetermine the question of whether or not to put its stamp of approval upon an inherently dishonest transaction cleverly engineered and executed through a Federal Agency (Federal Housing Administration) of the United States Government in conspiracy to defraud the United States Government and innocent persons out of several hundred thousands of dollars and with a continuing conspiracy to in turn endeavr to completely "whitewash" and cover up by means of a legal and technical procedure labeled "*foreclosure*".

This case offers an opportunity to apply the conception of justice as set forth in the opening words of the *Institutes of Justinian,* the key to that vast edifice of Roman Law which embodied the experience of the ancient world. This classical definition of *justice,* a legal rendering of the Golden Rule, and covering economic as well as political rights, is:

> "*Justice is the constant and enduring will to give to every man his right.*"

It is respectfully submitted that this petition should be granted.

COLLEGE HOMES, INC.

By ALDEN CHAS. PALMER,
President,
3255 Palmer Drive,
Los Angeles 65, California.